

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 111

Introduced by Senator Alquist
(Coauthors: Senators Margett and Ortiz)
(Coauthors: Assembly Members Goldberg, La Suer, Lieber,
Negrete McLeod, Pavley, and Spitzer)

January 24, 2005

An act to amend Sections 801.1 and 803 of the Penal Code, relating to statutes of limitations.

LEGISLATIVE COUNSEL'S DIGEST

SB 111, as amended, Alquist. Statute of limitations: sex crimes.

Existing law requires that prosecution for certain felony sex offenses commence within 10 years after commission of the offense.

This bill would instead state that prosecution for certain felony sex offenses that are alleged to have been committed when the victim was under the age of 18 years, may be commenced any time prior to the victim's 30th birthday.

Existing law specifies that a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency, as defined, by a child who is the victim of certain sex crimes, or within one year of the date of a report to a California law enforcement agency by a person under 21 years of age who is the victim of certain sex crimes.

This bill would repeal those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 the Child Sexual Abuse Prevention Act.

3 SECTION 1.

4 SEC. 2. Section 801.1 of the Penal Code is amended to read:

5 801.1. (a) Notwithstanding any other limitation of time
6 described in this chapter, prosecution for a felony offense
7 described in Section 261, 286, 288, 288.5, 288a, or 289, or
8 Section 289.5, as enacted by Chapter 293 of the Statutes of 1991
9 relating to penetration by an unknown object, that is alleged to
10 have been committed when the victim was under the age of 18
11 years, may be commenced any time prior to the victim's 30th
12 birthday.

13 (b) Notwithstanding any other limitation of time described in
14 this chapter, if subdivision (a) does not apply, prosecution for a
15 felony offense described in subparagraph (A) of paragraph (2) of
16 subdivision (a) of Section 290 shall be commenced within 10
17 years after commission of the offense.

18 ~~SEC. 2. Section 803 of the Penal Code, as amended by~~
19 ~~Chapter 2 of the Statutes of 2003-04 of the Fourth Extraordinary~~
20 ~~Session, is amended to read:~~

21 ~~803. (a) Except as provided in this section, a limitation of~~
22 ~~time prescribed in this chapter is not tolled or extended for any~~
23 ~~reason.~~

24 ~~(b) No time during which prosecution of the same person for~~
25 ~~the same conduct is pending in a court of this state is a part of a~~
26 ~~limitation of time prescribed in this chapter.~~

27 ~~(c) A limitation of time prescribed in this chapter does not~~
28 ~~commence to run until the discovery of an offense described in~~
29 ~~this subdivision. This subdivision applies to an offense~~
30 ~~punishable by imprisonment in the state prison, a material~~
31 ~~element of which is fraud or breach of a fiduciary obligation, the~~
32 ~~commission of the crimes of theft or embezzlement upon an elder~~
33 ~~or dependent adult, or the basis of which is misconduct in office~~
34 ~~by a public officer, employee, or appointee, including, but not~~
35 ~~limited to, the following offenses:~~

36 ~~(1) Grand theft of any type, forgery, falsification of public~~
37 ~~records, or acceptance of a bribe by a public official or a public~~
38 ~~employee.~~

1 ~~(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.~~

2 ~~(3) A violation of Section 25540, of any type, or Section~~
3 ~~25541 of the Corporations Code.~~

4 ~~(4) A violation of Section 1090 or 27443 of the Government~~
5 ~~Code.~~

6 ~~(5) Felony welfare fraud or Medi-Cal fraud in violation of~~
7 ~~Section 11483 or 14107 of the Welfare and Institutions Code.~~

8 ~~(6) Felony insurance fraud in violation of Section 548 or 550~~
9 ~~of this code or former Section 1871.1, or Section 1871.4, of the~~
10 ~~Insurance Code.~~

11 ~~(7) A violation of Section 580, 581, 582, 583, or 584 of the~~
12 ~~Business and Professions Code.~~

13 ~~(8) A violation of Section 22430 of the Business and~~
14 ~~Professions Code.~~

15 ~~(9) A violation of Section 10690 of the Health and Safety~~
16 ~~Code.~~

17 ~~(10) A violation of Section 529a.~~

18 ~~(11) A violation of subdivision (d) or (e) of Section 368.~~

19 ~~(d) If the defendant is out of the state when or after the offense~~
20 ~~is committed, the prosecution may be commenced as provided in~~
21 ~~Section 804 within the limitations of time prescribed by this~~
22 ~~chapter, and no time up to a maximum of three years during~~
23 ~~which the defendant is not within the state shall be a part of those~~
24 ~~limitations.~~

25 ~~(e) A limitation of time prescribed in this chapter does not~~
26 ~~commence to run until the offense has been discovered, or could~~
27 ~~have reasonably been discovered, with regard to offenses under~~
28 ~~Division 7 (commencing with Section 13000) of the Water Code,~~
29 ~~under Chapter 6.5 (commencing with Section 25100) of, Chapter~~
30 ~~6.7 (commencing with Section 25280) of, or Chapter 6.8~~
31 ~~(commencing with Section 25300) of, Division 20 of, or Part 4~~
32 ~~(commencing with Section 41500) of Division 26 of, the Health~~
33 ~~and Safety Code, or under Section 386, or offenses under~~
34 ~~Chapter 5 (commencing with Section 2000) of Division 2 of,~~
35 ~~Chapter 9 (commencing with Section 4000) of Division 2 of,~~
36 ~~Section 6126 of, Chapter 10 (commencing with Section 7301) of~~
37 ~~Division 3 of, or Chapter 19.5 (commencing with Section 22440)~~
38 ~~of Division 8 of, the Business and Professions Code.~~

39 ~~(f) (1)~~

~~Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.~~

~~(2) This subdivision applies only if all of the following occur:~~

~~(A) The limitation period specified in Section 800, 801, 801.1, or 801.2, whichever is later, has expired.~~

~~(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.~~

~~(C) There is independent evidence that clearly and convincingly corroborates the victim's allegation.~~

~~(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.~~

~~(4) (A) In a criminal investigation involving any of the crimes listed in this subdivision committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency; if that disclosure is ordered pursuant to the subpoena after the litigation.~~

~~(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.~~

~~(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.~~

~~(g) (1) Notwithstanding the limitation of time described in Section 800, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10~~

1 years from the commission of the offense, or one year from the
2 date on which the identity of the suspect is conclusively
3 established by DNA testing, whichever is later, provided,
4 however, that the one-year period from the establishment of the
5 identity of the suspect shall only apply when either of the
6 following conditions is met:

7 (A) For an offense committed prior to January 1, 2001,
8 biological evidence collected in connection with the offense is
9 analyzed for DNA type no later than January 1, 2004.

10 (B) For an offense committed on or after January 1, 2001,
11 biological evidence collected in connection with the offense is
12 analyzed for DNA type no later than two years from the date of
13 the offense.

14 (2) In the event the conditions set forth in subparagraph (A) or
15 (B) of paragraph (1) are not met, the limitations period for
16 commencing prosecution for a felony offense described in
17 subparagraph (A) of paragraph (2) of subdivision (a) of Section
18 290, where the limitations period set forth in Section 800 has not
19 expired as of January 1, 2001, or the offense is committed on or
20 after January 1, 2001, shall be 10 years from the commission of
21 the offense.

22 (3) For purposes of this section, “DNA” means
23 deoxyribonucleic acid.

24 (h) For any crime, the proof of which depends substantially
25 upon evidence that was seized under a warrant, but which is
26 unavailable to the prosecuting authority under the procedures
27 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
28 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
29 Cal.App.4th 1757, or subdivision (e) of Section 1524, relating to
30 claims of evidentiary privilege or attorney work product, the
31 limitation of time prescribed in this chapter shall be tolled from
32 the time of the seizure until final disclosure of the evidence to the
33 prosecuting authority. Nothing in this section otherwise affects
34 the definition or applicability of any evidentiary privilege or
35 attorney work product.

36 SEC. 3. Section 803 of the Penal Code, as added by Chapter
37 2 of the Statutes of 2005, is amended to read:

38 803. (a) Except as provided in this section, a limitation of
39 time prescribed in this chapter is not tolled or extended for any
40 reason.

1 (b) No time during which prosecution of the same person for
2 the same conduct is pending in a court of this state is a part of a
3 limitation of time prescribed in this chapter.

4 (c) A limitation of time prescribed in this chapter does not
5 commence to run until the discovery of an offense described in
6 this subdivision. This subdivision applies to an offense
7 punishable by imprisonment in the state prison, a material
8 element of which is fraud or breach of a fiduciary obligation, the
9 commission of the crimes of theft or embezzlement upon an elder
10 or dependent adult, or the basis of which is misconduct in office
11 by a public officer, employee, or appointee, including, but not
12 limited to, the following offenses:

13 (1) Grand theft of any type, forgery, falsification of public
14 records, or acceptance of a bribe by a public official or a public
15 employee.

16 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

17 (3) A violation of Section 25540, of any type, or Section
18 25541 of the Corporations Code.

19 (4) A violation of Section 1090 or 27443 of the Government
20 Code.

21 (5) Felony welfare fraud or Medi-Cal fraud in violation of
22 Section 11483 or 14107 of the Welfare and Institutions Code.

23 (6) Felony insurance fraud in violation of Section 548 or 550
24 of this code or former Section 1871.1, or Section 1871.4, of the
25 Insurance Code.

26 (7) A violation of Section 580, 581, 582, 583, or 584 of the
27 Business and Professions Code.

28 (8) A violation of Section 22430 of the Business and
29 Professions Code.

30 (9) A violation of Section 10690 of the Health and Safety
31 Code.

32 (10) A violation of Section 529a.

33 (11) A violation of subdivision (d) or (e) of Section 368.

34 (d) If the defendant is out of the state when or after the offense
35 is committed, the prosecution may be commenced as provided in
36 Section 804 within the limitations of time prescribed by this
37 chapter, and no time up to a maximum of three years during
38 which the defendant is not within the state shall be a part of those
39 limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

~~(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

~~(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:~~

~~(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.~~

~~(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in Section 800, 801, or 801.1.~~

~~(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.~~

~~(2) This subdivision applies only if all of the following occur:~~

~~(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.~~

1 (B) The crime involved substantial sexual conduct, as
2 described in subdivision (b) of Section 1203.066, excluding
3 masturbation that is not mutual.

4 (C) There is independent evidence that corroborates the
5 victim's allegation. If the victim was 21 years of age or older at
6 the time of the report, the independent evidence shall clearly and
7 convincingly corroborate the victim's allegation.

8 (3) No evidence may be used to corroborate the victim's
9 allegation that otherwise would be inadmissible during trial.
10 Independent evidence does not include the opinions of mental
11 health professionals.

12 (4) (A) *In a criminal investigation involving any of the crimes*
13 *listed in this subdivision committed against a child, when the*
14 *applicable limitations period has not expired, that period shall*
15 *be tolled from the time a party initiates litigation challenging a*
16 *grand jury subpoena until the end of the litigation, including any*
17 *associated writ or appellate proceeding, or until the final*
18 *disclosure of evidence to the investigating or prosecuting agency,*
19 *if that disclosure is ordered pursuant to the subpoena after the*
20 *litigation.*

21 (B) *Nothing in this subdivision affects the definition or*
22 *applicability of any evidentiary privilege.*

23 (C) *This subdivision shall not apply where a court finds that*
24 *the grand jury subpoena was issued or caused to be issued in bad*
25 *faith.*

26 ~~(h)~~

27 (g) (1) Notwithstanding any other limitation of time described
28 in this chapter, a criminal complaint may be filed within one year
29 of the date on which the identity of the suspect is conclusively
30 established by DNA testing, if both of the following conditions
31 are met:

32 (A) The crime is one that is described in subparagraph (A) of
33 paragraph (2) of subdivision (a) of Section 290.

34 (B) The offense was committed prior to January 1, 2001, and
35 biological evidence collected in connection with the offense is
36 analyzed for DNA type no later than January 1, 2004, or the
37 offense was committed on or after January 1, 2001, and
38 biological evidence collected in connection with the offense is
39 analyzed for DNA type no later than two years from the date of
40 the offense.

1 (2) For purposes of this section, “DNA” means
2 deoxyribonucleic acid.

3 (i)

4 (h) For any crime, the proof of which depends substantially
5 upon evidence that was seized under a warrant, but which is
6 unavailable to the prosecuting authority under the procedures
7 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
8 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
9 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
10 claims of evidentiary privilege or attorney work product, the
11 limitation of time prescribed in this chapter shall be tolled from
12 the time of the seizure until final disclosure of the evidence to the
13 prosecuting authority. Nothing in this section otherwise affects
14 the definition or applicability of any evidentiary privilege or
15 attorney work product.

16 (j) ~~(1) In a criminal investigation involving child sexual abuse~~
17 ~~as described in subdivision (f) or (g), when the limitations period~~
18 ~~set forth therein has not expired, that period shall be tolled from~~
19 ~~the time a party initiates litigation challenging a grand jury~~
20 ~~subpoena until the end of that litigation, including any associated~~
21 ~~writ or appellate proceeding, or until the final disclosure of~~
22 ~~evidence to the investigating or prosecuting agency, if that~~
23 ~~disclosure is ordered pursuant to the subpoena after the litigation.~~

24 ~~(2) Nothing in this subdivision affects the definition or~~
25 ~~applicability of any evidentiary privilege.~~

26 ~~(3) This subdivision shall not apply where a court finds that~~
27 ~~the grand jury subpoena was issued or caused to be issued in bad~~
28 ~~faith.~~

29 ~~(k) As used in subdivisions (f) and (g), Section 289.5 refers to~~
30 ~~the statute enacted by Chapter 293 of the Statutes of 1991~~
31 ~~relating to penetration by an unknown object.~~